



**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250  
SACRAMENTO, CA 95815-3832  
TELEPHONE: (916) 263-3680  
FACSIMILE: (916) 263-3675  
WEB ADDRESS: <http://www.dca.ca.gov/cba>



# ***Revised*** **Final Statement of Reasons**

*Hearing Date: May 20, 2005*

## **CALIFORNIA BOARD OF ACCOUNTANCY FINAL STATEMENT OF REASONS**

**Hearing Date:** May 20, 2005.

**Sections Affected:** Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 35.1, 70, and 98 of Division 1 of Title 16 of the California Code of Regulations.

### **Updated Information:**

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

No written comments were received related to the originally proposed text, and no member of the public provided comments at the public hearing.

After the hearing, the Board adopted the proposal with the modifications described below and delegated to its Executive Officer the authority to finalize the adoption if no negative comments were received during the fifteen day public comment period on the modified text. (See the Minutes of the Public Hearing in this file.)

The modified text was the result of recommendations developed by the Board's Practice Privilege Task Force and by staff subsequent to the publication of the Regulation Hearing Notice and are described below:

- Revisions to the Notification Form that follows Section 28:

The wording at the end of Item 2 under "Qualification Requirements" was revised to read "of which I am an employee or an employee/owner;". The reason for this change is that it is anticipated that partners in public firms will be submitting Notification Forms and may find the use of the word "employee" to be confusing.

Also, Item 12 on page 2 of the originally proposed Notification Form indicated that the fee is being submitted concurrently. The revised language deletes the word "concurrently" from Item 12 and makes a related change to the concluding statement of the form above the signature block. These revisions are necessary to make the Notification Form consistent with Business and Professions Code Section 5096 and proposed Section 31 which permit the fee to be received by the Board up to 30 days after notification.

Revisions also add a brief statement to the concluding statement of the Notification Form to indicate that the practice privilege commences on the date of submission of the completed notification unless a disqualifying condition is indicated. This revision is necessary to clearly communicate that in those instances in which a potentially disqualifying condition is reported, the practice privilege will not automatically commence with submission of the Notification Form.

Revisions also modify the privacy statement by retitling it “Personal Information Collection and Access,” revising the statutory references it contains, and including a statement to indicate that information may be disclosed in accordance with the California Public Records Act. These revisions are necessary for clarity, to correct an error in the statutes referenced in the originally proposed text, and to ensure that the person providing the notification is adequately informed regarding the possible disclosure of the information reported on the Notification Form.

In addition, revisions to the Notification Form also include minor grammatical changes for enhanced clarity and consistency.

- Revisions to Section 29 – Term of the Practice Privilege.

The originally proposed language did not provide for Notification Forms to be faxed to the Board. Revised language provides for this and indicates that the practice privilege commences when the Notification Form is submitted to the Board by facsimile.

Also, the originally proposed text of Section 29 did not specifically address what happens to a practice privilege held by an applicant for a California license once the California license is issued. Revisions to Section 29 address this by providing for the termination of the practice privilege when the California license is granted. This change will prevent individuals from holding two authorizations to practice at the same time. It is anticipated that this change also will minimize confusion and aid in the smooth administration of the Practice Privilege Program.

An additional revision to Section 29 deletes the reference to Section 30 (safe harbor) and instead revises Section 30 to include a reference to Section 29. This revision provides enhanced clarity and eliminates the need to revise Section 29 when the “safe harbor” provision sunsets.

Revised language also includes other minor wording changes for enhanced clarity and consistency.

- Section 30 – Safe Harbor – Period of the Notice.

The originally proposed text made the “safe harbor” provision available to everyone who submitted a Notification Form, even those with potentially disqualifying conditions. Proposed revisions to Section 30 indicate that the safe harbor provision is not available to those with potentially disqualifying conditions pursuant to Section 32. Without this revision, unqualified individuals may be permitted to legally practice under practice privilege during the five-business day “safe harbor” period.

The addition of the phrase “Notwithstanding Section 29” is necessary to indicate that Safe Harbor is an exception to the term of the practice privilege provided for in Section 29. Further, since Section 29 speaks to the term of the practice privilege,

revised language deletes the introductory phrase in Section 30 for enhanced clarity and simplicity. Revised language also adds a reference to the required fee so that subsection (a) is more comprehensive.

- Section 70 – Fees.

The originally proposed text indicated that the fee to be charged an individual for practice privilege shall be \$100. Revised language indicates that the fee is for submission of the Notification Form. This change is necessary to clarify that submitting the fee does not automatically afford the individual practice privilege. Also, in the event the individual does not qualify for practice privilege, he or she will not expect the fee to be refunded.

The revised text was provided for public comment during the period May 31, 2005, through June 24, 2005. No comments were received. The Executive Officer approved the adoption of the modified text.

During implementation development, additional problems with the originally proposed text and the first modified text came to light. With regard to Section 27, it was noted that the originally proposed text would permit any individual who holds a current, valid license, certificate or permit from a state the Board has designated as “substantially equivalent” to qualify for a practice privilege. At its meeting of May 20, 2005, the Board designated “substantially equivalent” states. Some of the states designated as “substantially equivalent” have two groups of licensees (generally known as “two-tier states”). The Board determined that only one group of licensees from a two-tier state was qualified for practice privilege because only one group obtained licensure by meeting requirements substantially equivalent to the requirements in Business and Professions Code Section 5093. The second modified text revises subsection (a) to communicate this distinction. The preamble of Section 27 is also revised for greater consistency.

It was also noted that that signature block in the electronic form differed slightly from the signature block in subsection (c) of Section 28. The modified text revises subsection (c) for consistency.

In addition, during implementation development, minor inconsistencies and drafting weaknesses to the Notification Form were identified and the following modifications to address these problems were developed. For consistent usage the words “Business Hours” under the telephone number were capitalized. Also the words “business hours” under the fax number were deleted because fax machines do not have business hours. Item 4 under “Qualification Requirements” was modified to be consistent with the changes to Section 27 noted above. The word “timely” was inserted in Item 12 of the Qualification Requirements to communicate that there are time constraints related to the submission of the fee. Under Disqualifying Conditions “Attachment X” was changed to “Attachment 1” to indicate the correct numbering of the attachment and the title of the attachment was similarly modified. In addition, the statement under the signature block

was revised to more accurately communicate the term of the practice privilege. On the attachment, the space for the individual to provide his or her "Unique Identifier" was removed because it was recognized that the individual will not have a unique identifier until after the practice privilege is approved.

These modifications were provided for public comment during the period August 16, 2005, through September 6, 2005. No comments were received. This modified text was considered and adopted by the Board at its meeting of September 16, 2005.

At its meeting of September 16, 2005, the Board also adopted a nonsubstantive change to the Notification Form: the introduction to the section of the form on Disqualifying Conditions previously stated "Please check any of the items below that apply." This was revised to say "Please respond to the following items." The reason for this change was to be consistent with the requirement that the individual check either the "Y" box or the "N" box for each of the items.

The final text included insertion of a comma in the preamble of Section 27 after the word "license" for readability. It also included the insertion of the words "Unique Identifier" after the words "Expiration date" in the Additional Information Section of the Notification Form. Each practice privilege holder will be given a unique identifier by the Board. This will facilitate the administration of subsection (b) of Section 29 related to the termination of a previously held practice privilege when a subsequent Notification Form is submitted to the Board.

The final text also included the following grammar and style changes to the Notification Form: the insertion of a colon after "Telephone Number (Business Hours)," the substitution of "Date of Birth" for "Date Of Birth," the capitalization of "Disqualifying Conditions" in two places on Attachment 1, the insertion of the word "California" before the "Business and Professions Code," "Civil Code," and "Information Practices Act" in the statement on Personal Information Collection and Access and the deletion of the letter "s" in "privileges" in the statement on Personal Information Collection and Access.

Pursuant to review by the Office of Administrative Law (OAL), the following additional nonsubstantive revisions were made: the word "Section" was inserted prior to the section number for Sections 28, 30, 31, 32, 33, 34, 35, and 98 for consistency of grammar and style; the reference notes for Sections 28, 30, 31, 33, 34, and 98 were revised to add additional relevant sections of the Business and Professions Code; all authority and reference notes were revised to insert commas and semicolons for correct grammar and style; Paragraph (2) of subsection (c) of Section 32 was revised for consistency with the statute (paragraph (2)(B) of subdivision (g) of Business and Professions Code Section 5096); and subsection (h) of Section 70 was revised to correct a spelling error. In addition, Item 8(a) on page 2 of the form following Section 28 was revised to delete the word "revoke" as the practice privilege statutes permit suspension, but not revocation, of the practice privilege to occur without prior notice or hearing. The form following Section 28 was also revised to spell out the full name of the National Association of State Boards of Accountancy and place parentheses around the

acronym in item 4 on page 1, to spell out the full names of the Securities and Exchange Commission and the Public Company Accounting Oversight Board and place parentheses around the acronyms in item 8 on page 2, and to insert the words “public accountancy” after the word “practice” in the fourth item under Required Additional Information on page 3, for improved grammar and/or style.

**Local Mandate:**

A mandate is not imposed on local agencies or school districts.

**Small Business Impact:**

The Board has determined that the proposed regulatory action would not have an adverse economic impact on small businesses. As indicated in the Initial Statement of Reasons, the regulations implementing practice privilege are likely to benefit consumers by facilitating the responsible cross-border movement of qualified CPAs from other states whose expertise is needed in California.

**Consideration of Alternatives:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

The originally proposed text and first modified text were alternatives to the final text. This language was revised for the reasons discussed under Updated Information above.

**Objections or Recommendations/Responses:**

The Board received no comments related to this regulatory action.

**Incorporation by Reference:**

Amendments to Section 98 incorporate by reference “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” – 6<sup>th</sup> edition, 2005. This document was developed for use by the Board, administrative law judges, and others involved in the disciplinary process in order to provide for the fair and consistent application of penalties when the Board takes action to discipline a licensee. The document is printed in booklet-style, and is 58 pages in length. Consequently, it would be cumbersome, unduly expensive, and generally impractical to publish the entire document in the California Code of Regulations. During this rulemaking process, “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” – 6<sup>th</sup> edition, 2005, has been available to the public upon request from the contact person designated in the notice and has also been available on the Board’s Web site. In addition, copies were made available to the public at the regulation hearing.